

By: Truitt

H.B. No. 2271

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain chiropractic clinics;
providing administrative and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle G, Title 2, Health and Safety Code, is
amended by adding Chapter 147 to read as follows:

CHAPTER 147. NON-DOCTOR-OF-CHIROPRACTIC-OWNED CHIROPRACTIC
CLINICS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 147.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person or business seeking to
be licensed under this chapter or seeking the renewal of a license
under this chapter.

(2) "Board" means the Texas Board of Chiropractic
Examiners.

(3) "Contracting doctor of chiropractic" means a
person engaged in the practice of chiropractic as described by
Section 201.002, Occupations Code, who holds a current active
license to practice chiropractic and who has entered into a
contractual agreement with a licensed chiropractic clinic owner to
provide chiropractic care.

(4) "Controlling person" means:

(A) an officer or director of a corporation
seeking a license under this chapter, a shareholder holding 10

1 percent or more of the voting stock of a corporation seeking to own
2 or operate a non-doctor-of-chiropractic-owned chiropractic clinic,
3 or a partner of a partnership seeking to own or operate a
4 non-doctor-of-chiropractic-owned chiropractic clinic; or

5 (B) an individual who possesses, directly or
6 indirectly, the power to direct or cause the direction of the
7 management or policies of a company that owns and operates a
8 non-doctor-of-chiropractic-owned chiropractic clinic through the
9 ownership of voting securities, by contract or otherwise.

10 (5) "Doctor of chiropractic" means a person engaged in
11 the practice of chiropractic as described by Section 201.002,
12 Occupations Code.

13 (6) "License holder" means an individual or entity
14 licensed under this chapter who owns or operates a
15 non-doctor-of-chiropractic-owned chiropractic clinic.

16 (7) "Non-doctor-of-chiropractic-owned chiropractic
17 clinic" means a chiropractic facility licensed under this chapter
18 and registered under Section 201.312, Occupations Code.

19 [Sections 147.002-147.050 reserved for expansion]

20 SUBCHAPTER B. POWERS AND DUTIES OF BOARD

21 Sec. 147.051. RULES. (a) The board shall adopt rules as
22 necessary to administer this chapter in accordance with Chapter
23 2001, Government Code.

24 (b) Each license holder is governed and controlled by this
25 chapter and the rules adopted by the board.

26 Sec. 147.052. INTERAGENCY COOPERATION. (a) Each state
27 agency that, in performing duties under other law, affects the

1 regulation of non-doctor-of-chiropractic-owned chiropractic
2 clinics shall cooperate with the board and other state agencies as
3 necessary to fully implement and enforce this chapter.

4 (b) The Texas Department of Insurance, the division of
5 workers' compensation of the Texas Department of Insurance, and the
6 attorney general's office shall assist in the implementation of
7 this chapter and shall provide information to the board on request.

8 Sec. 147.053. USE OF FEES. A fee collected by the board
9 under this chapter shall be used to implement and enforce this
10 chapter.

11 [Sections 147.054-147.100 reserved for expansion]

12 SUBCHAPTER C. LICENSING

13 Sec. 147.101. LICENSE REQUIRED. A
14 non-doctor-of-chiropractic-owned chiropractic clinic may not allow
15 a doctor of chiropractic to engage in or offer chiropractic
16 services or chiropractic care at the clinic unless each controlling
17 person for the clinic holds a license issued under this chapter.

18 Sec. 147.102. LICENSE APPLICATION. (a) Each controlling
19 person for a non-doctor-of-chiropractic-owned chiropractic clinic
20 that desires an original or renewal
21 non-doctor-of-chiropractic-owned chiropractic clinic license
22 shall file with the board a written application accompanied by the
23 application fee.

24 (b) The board may require an applicant for a license to
25 provide information and certifications necessary to determine that
26 the applicant meets the licensing requirements of this chapter.
27 The board may also require the applicant to provide information and

1 certifications necessary to determine whether individuals
2 affiliated with the applicant are qualified to serve as controlling
3 persons.

4 (c) An applicant, a license holder, the spouse of an
5 applicant or license holder, a partner of a limited liability
6 partnership, or any stockholder of a corporation is ineligible for
7 a license for two years after the date of a final board action on the
8 denial or revocation of a license applied for or issued under this
9 chapter. This restriction does not apply to a denial or revocation
10 of a license based on:

11 (1) an inadvertent error or omission in the
12 application if that error or omission is promptly corrected;

13 (2) the fact that the experience documented to the
14 board was insufficient at the time of the previous application; or

15 (3) the board being unable to complete the background
16 investigation required under Section 147.103 because of
17 insufficient information received from a local, state, or federal
18 law enforcement agency.

19 (d) An applicant, a license holder, the spouse of an
20 applicant or license holder, a partner of a limited liability
21 partnership, or any stockholder of a corporation is ineligible for
22 a license until the first anniversary of the date of a final board
23 action on the denial or revocation of a license applied for or
24 issued under this chapter if:

25 (1) the basis of the denial or revocation was that one
26 or more of the controlling persons affiliated with the applicant or
27 license holder was determined by the board to be unsuitable; or

1 (2) that unsuitable controlling person has in fact
2 ceased to be a controlling person of the applicant or license
3 holder.

4 Sec. 147.103. LICENSE REQUIREMENTS. (a) In this section:

5 (1) "Assigned employee" means a full-time employee
6 whose normal work week is at least 25 hours per week and whose work
7 is performed in this state. The term does not include an employee
8 hired to support or supplement the client's workforce in special
9 work situations, such as employee absences.

10 (2) "Good moral character" means a personal history of
11 honesty, trustworthiness, fairness, a good reputation for fair
12 dealing, and respect for the rights of others and for the laws of
13 this state and nation.

14 (b) To be qualified to serve as a controlling person for a
15 non-doctor-of-chiropractic-owned chiropractic clinic under this
16 chapter, the person must be at least 18 years of age, be of good
17 moral character, and have educational, managerial, or business
18 experience relevant to:

19 (1) operation of a business entity offering
20 chiropractic care; or

21 (2) service as a controlling person of a chiropractic
22 care facility.

23 (c) The board shall conduct a thorough background
24 investigation of each applicant to determine whether the applicant
25 is qualified under this chapter. The board may deny an application
26 for the issuance or renewal of a license if it finds that the
27 applicant is not qualified to be a controlling person under this

1 chapter. The investigation must include:

2 (1) the submission of fingerprints for processing
3 through appropriate local, state, and federal law enforcement
4 agencies; and

5 (2) examination by the board of police or other law
6 enforcement records maintained by local, state, or federal law
7 enforcement agencies.

8 (d) Board background investigations are governed by this
9 chapter and by Chapter 53, Occupations Code, and Section 411.122,
10 Government Code. Conviction of a crime does not automatically
11 disqualify a controlling person, require the revocation of a
12 license, or require the denial of an application for an original or
13 renewal license. The board shall consider criminal convictions as
14 provided by Chapter 53, Occupations Code, and Section 411.122,
15 Government Code.

16 (e) Each license holder shall maintain a registered agent
17 for the service of process in this state.

18 (f) An applicant for an original or renewal license must
19 demonstrate that the clinic for which the person is applying as a
20 controlling person has a net worth as follows:

21 (1) \$50,000 if the clinic employs fewer than five
22 assigned employees;

23 (2) \$75,000 if the clinic employs at least five but not
24 more than eight assigned employees; or

25 (3) \$100,000 if the clinic employs more than eight
26 assigned employees.

27 (g) The applicant shall demonstrate the net worth of the

1 clinic to the board by providing the board with the applicant's
2 financial statement or a copy of the applicant's most recent
3 federal tax return. The net worth requirement may also be satisfied
4 through guarantees, letters of credit, or other security acceptable
5 to the board. A guaranty is not acceptable under this subsection
6 unless the applicant submits sufficient evidence to satisfy the
7 board that the guarantor has adequate resources to satisfy the
8 obligations of the guaranty.

9 (h) In calculating net worth, an applicant shall include
10 adequate reserves for all taxes and insurance, including reserves
11 for claims incurred but not paid and for claims incurred but not
12 reported under plans of self-insurance for health benefits. The
13 calculation of net worth by an applicant shall be made according to
14 Section 448, Internal Revenue Code of 1986.

15 (i) A document submitted to establish net worth must reflect
16 the net worth as of a date not earlier than six months before the
17 date on which the application is submitted. A document submitted to
18 establish net worth must be prepared or certified by an independent
19 certified public accountant. Information supplied regarding net
20 worth, including copies of federal tax returns, is proprietary and
21 confidential and is exempt from disclosure to third parties, other
22 than to other governmental agencies with a reasonable legitimate
23 purpose for obtaining the information.

24 Sec. 147.104. FEES. (a) Each applicant for an original or
25 renewal license shall pay to the board on the issuance or renewal of
26 the license a fee set by the board by rule in an amount not to exceed
27 \$3,000.

1 (b) The board may charge reasonable fees for license
2 applications and license renewals, investigations, inspections,
3 and any other administrative or enforcement responsibilities
4 created under this chapter.

5 Sec. 147.105. POSTING OF LICENSES. (a) The board by rule
6 shall determine the form and content of:

7 (1) licenses issued under this chapter; and

8 (2) notices required to be posted under this section.

9 (b) Each license issued under this chapter must be posted in
10 a conspicuous place in the principal place of business in this state
11 of the license holder. Each license holder shall display, in a
12 place that is clear and unobstructed to public view, a notice
13 stating that the business operated at the location is licensed and
14 regulated by the board and that any questions or complaints should
15 be directed to the board.

16 (c) Each license holder issued a
17 non-doctor-of-chiropractic-owned chiropractic clinic license
18 under this chapter shall provide a copy of the license to the board
19 and to each contracting doctor of chiropractic on receipt of the
20 initial license and annually on renewal.

21 Sec. 147.106. LICENSE NOT ASSIGNABLE; CHANGE OF NAME OR
22 LOCATION. (a) A license holder may not conduct business under any
23 name other than that specified in the license. A license issued
24 under this chapter is not assignable. A license holder may not
25 conduct business under any fictitious or assumed name without prior
26 written authorization from the board. The board may not authorize
27 the use of a name that is so similar to that of a public office or

1 agency or to that of another license holder that the public may be
2 confused or misled by its use. A license holder may not conduct
3 business under more than one name unless it has obtained a separate
4 license for each name.

5 (b) A license holder may change its licensed name at any
6 time by notifying the board and paying a fee for each change of
7 name. The board by rule shall set the fee for a name change in an
8 amount not to exceed \$50. A license holder may change its name on
9 renewal of the license without the payment of the name change fee.

10 (c) A license holder must notify the board in writing within
11 30 days of:

12 (1) any change in the location of its primary business
13 office;

14 (2) the addition of more business offices; or

15 (3) a change in the location of business records
16 maintained by the license holder.

17 Sec. 147.107. RECORDS. Records of patient care and
18 treatment are the sole property of the patient and must be
19 maintained and kept in the custody of the doctor of chiropractic who
20 treats the patient for a period prescribed by the board.

21 [Sections 147.108-147.150 reserved for expansion]

22 SUBCHAPTER D. ADMINISTRATIVE AND CRIMINAL PENALTIES

23 Sec. 147.151. PROHIBITED ACTS; CRIMINAL PENALTY. (a) A
24 person may not:

25 (1) offer chiropractic services without holding a
26 license under this chapter as a non-doctor-of-chiropractic-owned
27 chiropractic clinic;

1 (2) use the name or title "chiropractic clinic" or
2 "chiropractic offices," or any derivation of the term
3 "chiropractic," or otherwise represent that the person is licensed
4 under this chapter unless the person holds a license issued under
5 this chapter;

6 (3) represent as the person's own the license of
7 another location or represent that a facility is licensed if the
8 person does not hold a license;

9 (4) give materially false or forged evidence to the
10 board in connection with obtaining or renewing a license or in
11 connection with disciplinary proceedings under this chapter; or

12 (5) use or attempt to use a license that has expired or
13 been revoked.

14 (b) A person that violates Subsection (a) commits an
15 offense. An offense under this subsection is a Class A misdemeanor.

16 (c) The board may notify the attorney general of a
17 violation, and the attorney general may apply to a district court in
18 Travis County for permission to file suit in the nature of quo
19 warranto or for injunctive relief, or both. The attorney general
20 may not be required to post a bond for injunctive relief.

21 Sec. 147.152. DISCIPLINARY ACTIONS. (a) For purposes of
22 this section, "conviction" includes a plea of nolo contendere or a
23 finding of guilt, regardless of adjudication.

24 (b) Disciplinary action may be taken against a license
25 holder by the board on any of the following grounds:

26 (1) the conviction of a license holder or any
27 controlling person affiliated with a license holder of bribery,

1 fraud, or intentional or material misrepresentation in obtaining,
2 attempting to obtain, or renewing a license;

3 (2) the conviction of a license holder or any
4 controlling person affiliated with a license holder of a crime that
5 relates to the operation of a non-doctor-of-chiropractic-owned
6 chiropractic clinic or the ability of the license holder or
7 controlling person to operate a non-doctor-of-chiropractic-owned
8 chiropractic clinic;

9 (3) the conviction of a license holder or any
10 controlling person affiliated with a license holder of a crime that
11 relates to the classification, misclassification, or
12 underreporting of employees under Subtitle A, Title 5, Labor Code;

13 (4) the conviction of a license holder or any
14 controlling person affiliated with a license holder of a crime that
15 relates to the establishment or maintenance of a self-insurance
16 program, whether health insurance, workers' compensation
17 insurance, or other insurance;

18 (5) the conviction of a license holder or any
19 controlling person affiliated with a license holder of a crime that
20 relates to fraud, deceit, or misconduct in the operation of a
21 non-doctor-of-chiropractic-owned chiropractic clinic;

22 (6) engaging in services of a
23 non-doctor-of-chiropractic-owned chiropractic clinic without a
24 license;

25 (7) transferring or attempting to transfer a license
26 issued under this chapter;

27 (8) violating this chapter or any order or rule issued

1 by the board under this chapter;

2 (9) failing to notify the board, in writing, of the
3 felony conviction of any controlling person not later than the 30th
4 day after the date on which that conviction is final;

5 (10) failing to cooperate with an investigation,
6 examination, or audit of the license holder's records conducted by
7 the license holder's insurance company or the insurance company's
8 designee, as allowed by the insurance contract or as authorized by
9 the board;

10 (11) failing to notify the board not later than the
11 30th day after the effective date of the change of any change in
12 ownership, principal business address, or the address of accounts
13 and records;

14 (12) failing to correct any tax filing or payment
15 deficiency within a reasonable time as determined by the board;

16 (13) refusing, after reasonable notice, to meet
17 reasonable health and safety requirements within the license
18 holder's control and made known to the license holder by a federal
19 or state agency;

20 (14) a delinquency in the payment of any taxes or debts
21 owed to this state other than a tax or debt subject to a legitimate
22 dispute;

23 (15) knowingly making a material misrepresentation to
24 an insurance company, the board, or any other governmental agency;
25 or

26 (16) failing to maintain the net worth requirements
27 required under Section 147.103.

1 (c) On a finding that a license holder or applicant has
2 violated one or more provisions of Subsection (b), the board may:

- 3 (1) deny an application for a license;
4 (2) revoke, restrict, or refuse to renew a license;
5 (3) impose an administrative penalty in an amount not
6 less than \$1,000 per violation, but not more than \$50,000;
7 (4) issue a reprimand; or
8 (5) place the license holder on probation for a period
9 and subject to conditions that the board specifies.

10 (d) On revocation of a license, the license holder shall
11 immediately return the revoked license to the board and notify all
12 employees, all patients, and the board that the clinic may no longer
13 provide chiropractic care and services.

14 (e) The board may take disciplinary action, deny a license
15 application or renewal, or revoke a license only on a determination
16 that a controlling person is unqualified, after notice to, and an
17 opportunity for a hearing by, the affected applicant, license
18 holder, or controlling person in accordance with Chapter 2001,
19 Government Code.

20 (f) If a license is revoked or renewal is denied, the
21 affected license holder may not request a reinstatement hearing
22 before the first anniversary of the date of revocation or denial.
23 The board may reinstate or renew the license only if the cause of
24 the revocation or denial has been corrected.

25 SECTION 2. Not later than November 1, 2009, the Texas Board
26 of Chiropractic Examiners shall adopt rules as required by Section
27 147.051, Health and Safety Code, as added by this Act.

1 SECTION 3. This Act takes effect September 1, 2009, except
2 that Section 147.101 and Subchapter D, Chapter 147, Health and
3 Safety Code, as added by this Act, take effect January 1, 2010.